

APPEAL NO. 93307

Pursuant to the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act), a contested case hearing was held in (city), Texas, on January 5, 1993, (hearing officer) presiding as hearing officer. The hearing was reopened to obtain clarification from the designated doctor and to give the parties an opportunity to respond to such clarification. The hearing officer determined that, in accord with the designated doctor's report, the appellant (claimant) reached maximum medical improvement (MMI) on November 4, 1992, with an 11% impairment rating. Claimant urges that the designated doctor did not have all the medical history needed to make his evaluations, that his examination was not sufficient, and that the designated doctor did not use the correct guidelines (Guides to the Evaluation of Permanent Impairment, Third Edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides)) in making his assessments. She further urges that she has not reached MMI according to her doctor and states she disagrees with the impairment rating. Claimant also submits exhibits that were not introduced or considered at the hearing. Respondent (carrier) asks that the decision be affirmed arguing that the presumptive weight accorded the designated doctor's determination on MMI and impairment rating has not been overcome by the great weight of other medical evidence. Carrier also objects to the consideration of the exhibits attached to the claimant's request for review.

DECISION

Finding the decision of the hearing officer is supported by sufficient evidence, the decision is affirmed.

Initially, we observe there is no basis advanced for us to consider the several evidentiary items attached to the request for review, which were not offered or considered at the hearing, and no apparent reason they should be considered at this time. Article 8308-6.42(a); Texas Workers' Compensation Commission Appeal No. 92154, decided June 4, 1992.

The only issues in the case were whether the claimant reached MMI on November 4, 1992, and, if so, the correct impairment rating. The compensability of a shoulder and back soft tissue injury as a result of a fall at work on (date of injury), was uncontested. In evidence was a report from a carrier requested doctor, (Dr. S), who concluded that the claimant reached MMI on August 20, 1992, with a 2% whole body impairment. Also in evidence was a report from the designated doctor, (Dr. W), selected by the Texas Workers' Compensation Commission (Commission), who concluded that the claimant reached MMI on November 4, 1992 with an 11% whole body rating. In response to a request from the hearing officer following the closing of the original hearing was a report from Dr. W that indicated that he used the correct version of the AMA Guides for all aspects of the evaluation. Dr. W's report reflects that his examination of the claimant was sufficient to enable him to render an evaluation and that he considered other medical evidence and tests in arriving at his opinion. It is appropriate, and probably necessary in most cases, for a

designated doctor to consider previous medical records and tests as a part of his evaluation process. See Texas Workers' Compensation Commission Appeal No. 93062, decided March 1, 1993. His report also indicated that although he was not specifically advised about an incident while the claimant was in physical therapy, and which occurred before his examination of the claimant (October 7, 1992), he was not sure it would make any difference "at this point since I evaluated this patient on 11-02-92 and used my physical findings that were present at that time along with the history of the various tests that had been performed, etc." which "is the basis for the AMA Guidelines." A report from the claimant's treating doctor, in response to Dr. W's report and letter to the hearing officer stated as follows:

(Claimant), as previously stated in my report of November 13, 1992, had begun participation in an active rehabilitation and strengthening program, however, this was terminated due to an acute exacerbation of the sprain resulting in marked tenderness increasing in severity of her pain and increase in her level of discomfort. (Claimant) was reinitiated on passive therapeutic modalities in order to diminish her pain and concomitantly referral was made for psychologic counseling as an aid to further diminish her pain by lessening her stress reaction and helping her to achieve control over the pain through biofeedback. Unfortunately, the program was unable to be completed due to failure to obtain authorization prior to initiation. In my opinion MMI can not be assessed without completion of the rehabilitative program and the patient had been given the benefit of psychological counseling to aid in management of her pain. Again, while the total body impairment of 11% relative to her soft tissue injuries is very likely an accurate assessment, there has been thus far no consideration given to the emotional impairment she has suffered and will continue to suffer as a result of her physical disability.

The claimant testified that she was still in pain and that she disputes the designated doctor's report because he did not perform an adequate exam, that he did not use the correct guides, and that he did not take into consideration her degenerative back disease, spondylosis, in making his assessment. She also testified that although she felt like she could do her job as a credit collector, she has not worked or looked for employment because she thought her work would suffer because she had to get up and down and move around.

The hearing officer determined that the great weight of the other medical evidence was not contrary to the assessment of the designated doctor, Dr. W. Clearly, there is sufficient evidence to support that determination. Both the carrier requested doctor and the designated doctor found that the claimant had reached MMI and the treating doctor indicated that the rating of 11% was very likely an accurate assessment. Even without the presumptive provisions on MMI and impairment rating by a designated doctor as set forth in Articles 3803-4.25 and 4.26, the evidence here is sufficient to sustain the hearing officer's decision. As we have stated, the designated doctor occupies a unique position under the 1989 Act and his report alone, under the circumstance present here, would provide a

sufficient basis to uphold the hearing officer's finding and conclusion. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Where, as here, there is sufficient evidence to support the hearing officer's determinations, and they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, there is no sound basis to disturb his decision. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Texas Worker's Compensation Commission Appeal No. 92232, decided July 20, 1992.

The decision is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Philip F. O'Neill
Appeals Judge

Gary L. Kilgore
Appeals Judge